

A Student's Guide to Tax Courses at Wayne Law (2009/10)

by Professor Michael J. McIntyre

1. Introduction

The study of taxation is an important element in the academic program of most law schools, here at Wayne and elsewhere. Tax is an important part of the business environment in which lawyers work. Here is what one court had to say about the importance of a knowledge of taxes for lawyers giving advice to businesses:

We recognize . . . that in today's business world the effects of tax laws are driving considerations in virtually all decisions. In this sense, a knowledge of the tax laws may well be a common denominator in various professions from legal practice as a tax lawyer, to the practice of tax accounting, to the business of asset management, and so on. *Hudgens v. Commissioner*, T.C. Memo 1997-33

Wayne Law School currently has three full-time tenured faculty members teaching in the tax field, Professor Linda Beale, Professor Alan Schenk and myself. All of us are reasonably well known in the tax community, in the United States and elsewhere. We all teach Taxation (LEX 7816), the introductory tax course at the Law School. This course typically is taught in the Fall Semester, one section in the day and the other in the evening. A third section is sometimes taught in the Winter Semester.

Taxation is a *prerequisite* for all other tax courses. We believe that most law students, whether or not they expect to engage in practice relating to taxation, would benefit substantially from taking the Taxation course. Indeed, we would require all students to take the course if we were in charge of the law school curriculum. Our view of the importance of an introductory course in taxation for a basic legal education is widely held among tax professors and among many academics in other areas of the law. Many potential employers would raise some question about a law school transcript that did not include a tax course.

In my view, a basic tax course is not only a good background for a legal career but is also an extremely useful course for understanding how law actually operates in a complex economy. I also believe that those who avoid tax because they want to avoid a challenge or feel they are weak in computational skills are making a major error. Tax is mostly not about numbers — it is about law. And those who seek to get through law school by avoiding challenges will not have gotten their money's worth. They will soon discover that they have obtained a law degree but not the top legal education that the degree is supposed to represent.

I provide many details about the courses I teach on my personal web site. The URL is: See <http://www.law.wayne.edu/mcintyre>. Click on “Classes” and then the course of your choice from the fly-out menu. Although my tax colleagues probably share many of the views expressed in this guide, they are not responsible for its content.

2. Information on Course Offerings

In addition to Taxation, the regular tax faculty members teach several other tax courses in their areas of specialization. These courses are intended for students who are interested in tax as a possible career or who expect to need an understanding of tax for a career in some other area of the law. Obviously, a student interested in a career in tax would want to take courses that gave an exposure to corporate taxation (*See* Business Planning and Taxation of Corporations) and taxation of partnerships. (*See* Partnership Tax). Two of the most dynamic areas of the tax law — areas in which many law firms, accounting firms, and government agencies have been hiring in recent years — are Multistate Taxation and International Tax.

International Aspects of U.S. Taxation (Int'l Tax) covers the international aspects of the tax system of the United States. It provides an overview of the tax treatment of American taxpayers earning income abroad and foreign taxpayers earning income in the United States. Planning problems are used extensively in the course. As a result, it is both a challenging analytical course and an important skills course, of value to students whether or not they end up practicing in the tax field. Additional information about the course and the materials I have developed for use in the course are available on my website.

Multistate Taxation deals with State corporate income taxes, State sales taxes, and various other State taxes. It does not deal with the property tax. Many of the cases used in the course are constitutional law cases, dealing primarily but not exclusively with the Commerce Clause. Michigan tax issues are given somewhat

greater prominence than issues for other states, but the course is national in scope. Michigan has recently (2009) adopted a corporate income tax. For Winter 2010, the course is being taught in the evening by Adjunct Professor Lynn Gandhi, a partner at the Honigman firm.

Professor Beale teaches a course in partnership taxation. This course is an important part of the tax curriculum. The course includes treatment of Limited Liability Corporations (LLCs) and Subchapter S Corporations, both of which are typically taxed as conduit entities. Professor Beale also teaches a corporate tax course.

Professor Schenk often teaches an 8-credit course, Business Planning: A Transactional Approach, with Adjunct Professor Peter Sugar. The year-long course covers, among other topics, corporate taxation and securities regulation. As the course name suggests, the course takes a transactional approach to the teaching of business tax law. Professor Schenk occasionally teaches a course in corporate taxation.

Professor Schenk frequently teaches a course on consumption taxes that draws heavily on his academic writings and practical experience with the value-added tax (Consumption-Based Taxation). Under the auspices of the International Monetary Fund, Professor Schenk has provided technical assistance to a number of African countries on the design and implementation of a value-added tax. As Professor-in-Residence at the IRS, Professor Schenk worked on the portion of the landmark 1985 Treasury Department tax reform report dealing with the possible adoption of a value-added tax in the United States. For the Fall 2009 term, Professor Schenk is co-teaching a course titled "Consumption Taxes" with Professor Reuven Avi-Yonah at the University of Michigan. That course is open to Wayne students on a pass-fail basis.

From time to time, I teach a course on International Tax Treaties, which draws on my extensive experience in that small corner of the tax law. In recent years, I have combined that course with a seminar on the same topic. The difference between the course and the seminar is that those taking the seminar must write a research paper. The seminar is listed, somewhat deceptively, as Tax Policy: Current Issues (LEX 8361). In effect, the "current issues" on the agenda of that seminar are issues relating to tax treaties. The course is listed more descriptively as International Tax Treaties (LEX 7416).

Tax Courses Typically Taught by Full-Time Faculty		
Professor McIntyre	Professor Beale	Professor Schenk
International Aspects of U.S. Taxation (LEX 7401), 3 credits	Federal Income Taxation of Partnerships (LEX 7311), 2/3 credits	Business Planning: A Transactional Approach (LEX 7061), 8 credits
International Tax Treaties (course (LEX 7416)/seminar (LEX 8361)), 2/3 credits	Taxation of Corporations (LEX 7821), 4 credits	Consumption-Based Taxation (7131), 2 credits
Multistate Taxation in the Digital Age (LEX 7605), 3 credits	Taxation (LEX 7816), 4 credits	Taxation of Corporations (LEX 7821), 4 credits
Taxation (LEX 7816), 4 credits		Taxation (LEX 7816), 4 credits

All of the tax courses taught by the full-time tax faculty are open to both J.D. candidates and LL.M. candidates.

Professor Schenk frequently teaches a course in Accounting for Lawyers (LEX 7002). Although that course is not a tax course, it provides a useful background for some advanced tax courses. It is typically taught by Professor Schenk as an intensive program during the two weeks preceding the Fall term.

Not all of the courses listed above are taught every year. I teach Int'l Tax and Multistate Taxation most years, typically in the Winter term. When I do not teach Multistate Taxation, it usually is offered by an Adjunct Professor.

My International Tax Treaties course/seminar is taught less frequently. It was taught in 1998, 2001, 2003, 2007, and 2009. Professor Schenk typically does not teach Taxation of Corporations in years when he is teaching Business Planning.

The tax courses taught by the full-time faculty are supplemented by offerings of the Part-Time (Adjunct) Faculty. For example, adjunct professors typically teach estate and gift taxation and various tax practice courses. A listing of the tax courses offered by the adjunct faculty for academic year 2009/10 is provided below. All of

these courses are taught in the evening. This listing may be incomplete. Only courses I could verify as actually being taught are listed.

Tax Courses Taught by Part-Time Faculty
Estate, Gift & Inheritance Taxation (Sweeney), Fall, 2009, LEX 7241, 2 credits
Federal Tax Practice (Rose), Winter, 2010, LEX 7316, 2 credits
Nonprofit Entities (Keller), Winter, 2010, LEX 7641, 2 credits
Multistate Taxation (Gandhi), Winter, 2010, LEX 7771, 3 credits

3. Picking Among Tax Courses

My expectation is that all students with any significant interest in the tax field (or in a good legal education) would take Taxation (LEX 7816). This expectation is shared by Professor Schenk and Professor Beale and by just about everyone teaching tax at a law school. The course generally is offered every year, with at least two sections. Because Taxation is a prerequisite for most other tax courses, it generally is made available to students in the Fall of their Second Year. One section is scheduled in the day and the other in the evening.

Students interested in corporate tax have several options open to them. One option, not always available, is the 8-credit hour Business Planning course. J.D. students normally would take that course in their third year. In their second year, they would take the two prerequisites: Taxation and Corporations. About half of the business planning course concentrates on corporate taxation. The Law School is not able to offer the Business Planning course every year. It is being taught for academic year 2009/10 by Professors Schenk and Sugar.

For LL.M. and JD students, the Law School generally offers Taxation of Corporations, a four-credit course taught from time to time by Professor Schenk and Professor Beale. It generally is offered only during the day.

Students interested in Multistate Taxation or Int'l Tax may take those courses in their second or third year. Multistate Taxation is called "State and Local tax" at some law schools.

Because the International Tax Treaties course/seminar is not taught every year, students interested in that area of the tax law should take it whenever it is offered. Because Taxation is a prerequisite, JD students generally take the treaty

course/seminar in their third year. The paper for the seminar satisfies the Law School's writing requirement.

Most of the advanced tax courses typically attract a mix of J.D. students and LL.M. students. Students who contemplate pursuing an LL.M. degree here at Wayne or elsewhere should consider taking courses such as Int'l Tax and Consumption-Based Tax that are special features of this Law School and are not offered at many other law schools.

4. Recommendations for Students Specializing in Tax

1. **Core Tax Curriculum.** The tax faculty, in a memo written in 2008 to the Curriculum Committee, recommended that certain courses be considered as the core curriculum in taxation. I present the views expressed in that memo here as a general guide. According to that memo, JD students wishing to focus on preparation for a career in the tax field should take the core curriculum plus some tax electives. LL.M. students majoring in taxation also should take all of the courses in the core curriculum, plus some electives. Some exceptions are appropriate for LL.M. students who recently took these courses at another law school. Please understand that this set of recommendations was a planning document; not all of the recommended courses are currently available.

Here is the recommended core curriculum in tax, with the potential instructors and credits indicated:

Core Tax Curriculum (14 Credits)

Taxation (4 credits; Beale, McIntyre, Schenk)

Corporate Tax (4 credits; Beale, Schenk)

Partnership Tax (3 credits; Beale)

International Aspects of U.S. Taxation (3 Credits; McIntyre, Beale)

The LL.M. program currently requires students specializing in tax to take only two required courses, Taxation and Corporate Tax. Those students also are required to take a total of 18 credits in tax-related courses. Tax-related courses would include all of the tax electives discussed below, plus some additional courses. I have not attempted to draw up a list of all courses that would qualify as tax-related courses.

2. **Additional Tax Electives.** The Law School is currently offering a variety of electives in taxation, open to JD and LL.M. students, in addition to the courses listed above in the core tax curriculum.. Here is a list of tax electives currently

offered or anticipated, with the potential instructors and credits indicated. It is not anticipated that all of these courses would be taught every year.

Additional Tax Electives

Business Planning (4 or 8 credits, Schenk & Sugar*)

Multistate Tax (3 credits; McIntyre, Gandhi*)

Tax Policy Seminar (3 credits, Beale, McIntyre, Schenk) (not currently available)

Beale (Tax Ethics) (not currently available)

McIntyre (International Tax Treaties)

Consumption-based Taxation (2 credits, Schenk)

International Tax Treaties (2 credits, McIntyre)

Estate, Gift & Inheritance Tax (2 credits, Sweeney*)

Federal Tax Practice (2 credits, Rose*)

*Adjunct professor

Suggested Schedule for Tax Courses		
Year	Fall	Winter
Second	Taxation (2 sections, day and evening)	Taxation (day) Int'l tax (day) Multistate Taxation (alternating day and evening) Corporate Tax (evening)
Third	Corporate Tax (day) Partnership Tax (alternating day and evening) Seminar Int' Tax Treaties (day, every 3 years)	Business Planning (4 credit) Consumption-based Taxation (day) Seminar

5. Course Descriptions (Alphabetical)

Business Planning: A Transactional Approach LEX 7061, 8 Credits (two terms)

Prereq: Corporations (LEX 7156) and Taxation (LEX 7816). Not open to students who have taken Business Planning and Taxation of Corporations and Shareholders

(former JDC 728), Taxation of Corporations (LEX 7821), Securities Regulation (LEX 7761), Corporate Tax I (LEX 7146) or Corporate Tax II (LEX 7151).

Organizational problems for the closely held and the public corporation; operational problems such as stock distributions, issuance of new securities, constructive dividend problems and stock redemptions; corporate acquisitions, other reorganizations, contested take-overs, and liquidation and termination problems.

Consumption-Based Taxation LEX 7131, 2 Credits *Prereq:* Taxation (LEX 7816).

Economic, administrative, and legal aspects of consumption-based sales taxes with an emphasis on value-added tax. The course will cover the various forms of VAT adopted abroad and the proposals for a VAT in the United States. The course will concentrate on the American Bar Association's Model Statute for the United States, the rules pertaining to the harmonization of VAT in the European Community, the Japanese Consumption Tax, the Canadian Goods and Services Tax, and the legislative proposals for a VAT in the United States.

Estate, Gift & Inheritance Taxation LEX 7241, 2 Credits

Prereq: Taxation (LEX 7816). Not open to students who have taken Estate & Gift Tax & Estate Planning Workshop (LEX 7246).

Federal and state transfer taxes and income taxation of fiduciaries and beneficiaries.

Federal Income Taxation of Partnerships LEX7311, 2 or 3 Credits *Prereq.:* LEX 7816 Taxation

Covers the tax treatment of partnerships (including multiple-member LLCs); topics include transfers of property to partnerships, operation of a partnership, distributions of property, transactions between partners and partnerships, transfers of interests in partnerships, and termination of partnerships; some coverage also given to taxation of Subchapter S corporations, partnership agreement provisions, and related topics.

Federal Tax Practice LEX 7316, 2 Credits *Prereq:* Taxation (LEX 7816).

Procedure, both administrative and judicial, involved in the conduct of federal tax controversies.

International Aspects of U.S. Taxation LEX 7401, 3 Credits

Prereq: Taxation (LEX 7816). Not open to students who have taken ACC 7400

This course addresses two major topics in international tax: (1) the taxation by the federal government of foreign persons operating within the United States and (2) the taxation by the federal government of U. S. citizens, resident aliens, and U.S.

corporations on income derived outside the United States. Subtopics covered include: residence rules, taxation of foreign persons, source of income and deduction, transfer pricing, foreign tax credit, tax haven operations, and more. The emphasis is on the taxation of the multinational corporation.

International Tax Treaties LEX 7416, 2 Credits *Prereq:* Taxation (LEX 7816).

International income tax treaties based on the OECD and UN Model Treaties. Topics include taxation of business income, permanent establishment rules, taxation of employees and independent contractors on their personal services income, taxation of investment flows, arrangements for administrative cooperation and dispute settlement, and special rules for some international transportation industries.

Multistate Taxation In the Digital Age LEX 7605 Cr. 3

Prereq: Taxation (LEX 7816). Not open to students who have taken State and Local Taxes (LEX 7771).

Sales and use taxes and corporate and personal income taxes imposed by states and other subnational governments, including Indian tribes. Extensive treatment is given to the constitutional limitations on cross-border taxation under the Due Process Clause and the Commerce Clause. Methods for apportioning income among jurisdictions are covered from a theoretical and practical perspective. The course addresses the special income tax and sales tax issues that arise from electronic commerce.

Taxation LEX 7816, 4 Credits

This course is designed to provide students with an understanding of the fundamentals of the taxation of personal income in the United States. An understanding of those fundamentals is essential for students who hope to practice tax law or to pursue areas of the law where an understanding of taxation is important. The U.S. tax laws attempt to give specific answers to a substantial percentage of the tax questions generated by a complex and diversified economy. These answers are found in the Internal Revenue Code, in the Treasury regulations, in the various administrative determinations, and in the vast case law which has been generated since 1913. The answers to many of the questions that arise in the practice of law cannot be found in the existing tax laws. Those answers must be worked out by applying various principles of taxation drawn from existing law and from tax theory. This course shows how various policy goals are reflected in the Tax Code and how those policy goals affect the interpretation of that Code.

Taxation of Corporations LEX 7821, 4 Credits

Prereq: Taxation (LEX 7816). Not open to students who have taken Business Planning: A Transactional Approach (LEX 7061), Corporate Tax I (LEX 7146), Corporate Tax II (LEX 7151), or Elements of Corporate Tax (LEX 7203).

A detailed exploration of the federal income tax problems of corporations and their investors; an analysis of the statutory rules governing transactions between corporations and their shareholders, including tax-free incorporations, property and stock distributions, constructive dividend problems, stock redemptions; corporate reorganizations with a focus on corporate recapitalizations, dispositions of the assets of a corporation or of investor's interests in a corporation; liquidation problems; and the impact of judicial doctrines on corporate tax planning.

Tax Policy: Current Issues LEX 8361, 3 Credits *Prereq:* Taxation (LEX 7816).

In recent years, this seminar has been taught in conjunction with a course, International Tax Treaties. It is the same as that course except that a paper is also required. An examination is given to all students at the end of the course/seminar.